

ORDER BELOW EXH 5

The present application at Exh. 5 is filed by the plaintiff under the provisions of Order XXXIX Rules 1 and 2 read with Section 151 of the Code of Civil Procedure, 1908, seeking a temporary injunction against the defendants, thereby restraining them, their agents, or any person claiming through them from disturbing the plaintiff's alleged possession over the suit property, and further restraining them from transferring, alienating, encumbering, or creating any third-party interest therein till the final disposal of the suit.

2. The defendants have filed their detailed say opposing the application. Defendant Nos. 1 and 2 have filed their say at Exh 22, and Defendant No. 3 at Exh 32 has also filed say resisting the application.

3. The case of the plaintiff, as disclosed from the plaint and application at Exh. 5, is that the suit property originally belonged to deceased Rajaram Bandoba Wingkar, who died intestate, and thereafter his legal heirs, namely the plaintiff and defendants, succeeded to the suit property as per the provisions of the Hindu Succession Act.

4. It is contended that the suit property is ancestral and joint, and no partition has taken place till date. The plaintiff claims that she has an undivided share in the suit property and is entitled to partition and separate possession. It is further alleged that despite repeated demands, the defendants have refused to effect partition and are attempting to deny the share of the plaintiff. The plaintiff has further contended that the defendants are in possession of the suit property and are cultivating the same and deriving income therefrom.

5. It is further alleged that the defendants are likely to transfer or create third-party interest in the suit property, which would seriously

prejudice the rights of the plaintiff. Hence, the present application seeking temporary injunction.

6. Defendant Nos. 1 and 2, in their say, have partly admitted certain foundational facts such as relationship between the parties and entries in revenue record, but have denied the claim of the plaintiff regarding her share and entitlement. They have contended that the plaintiff has no subsisting right as alleged and have denied all allegations of refusal, obstruction, and threats. It is contended that the application is false, vexatious and filed with an intention to harass the defendants.

7. Defendant No. 3, in her say, has admitted that the suit property is joint family property and has specifically admitted that she has a 1/4th share in the suit property and has also claimed partition of her share .

8. Heard learned Advocates for both sides. Perused the plaint, application at Exh. 5, say of the defendants and documents on record.

9. Upon consideration of the rival pleadings and material placed on record, the following points arise for my determination:

Sr. No.	Points for Determination	Findings
1	Whether the plaintiff proves prima facie case?	Partly Yes
2	Whether the balance of convenience lies in favour of the plaintiff?	Yes
3	Whether the plaintiff would suffer irreparable loss?	Yes
4	What order?	Application partly allowed

REASONS

As to Point No. 1 - Prima Facie Case

10. It is a settled position of law that while considering an application under Order XXXIX Rules 1 and 2 of the Code of Civil Procedure, the Court is required to examine whether the plaintiff has established a prima facie case.

11. The Hon'ble Supreme Court in *Dalpat Kumar v. Prahlad Singh, (1992) 1 SCC 719*, has held that a prima facie case does not mean a case proved to the hilt, but a substantial question requiring investigation.

12. In the present case, the relationship between the parties as legal heirs of deceased Rajaram Bandoba Wingkar is not seriously disputed. The revenue entries reflecting names of legal heirs are also not denied. Further, Defendant No. 3 has categorically admitted that the property is joint and that she has a share therein.

13. At the same time, it is necessary to examine whether the plaintiff has established prima facie possession over the suit property so as to seek protection against alleged disturbance. The pleadings of the plaintiff itself indicate that the defendants are in possession of the suit property and are cultivating the same. The plaintiff has not placed any material on record to show that she is in actual, settled or exclusive possession of the suit property. In a case of co-ownership, possession of one co-sharer is deemed to be possession on behalf of all, unless there is clear and cogent evidence of ouster. In the present case, no such material is produced to prima facie show that the plaintiff has been excluded from possession or that the defendants have denied her title in a manner amounting to ouster.

14. It is a settled principle that one co-sharer cannot ordinarily seek injunction against another co-sharer restraining use or enjoyment of joint property, unless there is clear proof of ouster or acts amounting to waste or exclusion. In the present case, no such exceptional circumstances are made out. Therefore, the plaintiff is not entitled to relief of restraining the defendants from disturbing possession. However, this does not disentitle the plaintiff from seeking limited protection of the property against alienation.

15. Thus, from the material placed on record, it prima facie appears that the suit property is joint in nature and that the plaintiff has an undivided share therein, which gives rise to a substantial triable issue requiring adjudication. However, as discussed above, the plaintiff has failed to establish prima facie possession over the suit property so as to seek protection against alleged disturbance of possession. Therefore, the prima facie case is made out only to a limited extent, namely, for protection of the suit property from alienation or creation of third-party rights, and not for grant of injunction relating to possession. Hence, Point No. 1 is answered in the affirmative, to the aforesaid limited extent.

As to Point No. 2 - Balance of Convenience

16. The second requirement is that the balance of convenience must lie in favour of the plaintiff. The Hon'ble Supreme Court in ***Wander Ltd. v. Antox India Pvt. Ltd., 1990 Supp SCC 727***, has held that the Court must weigh comparative mischief or inconvenience likely to be caused to the parties.

17. In the present case, the defendants are admittedly in possession of the suit property. The plaintiff is seeking restraint only against alienation or creation of third-party rights. If such injunction is

refused, the defendants may transfer or encumber the property, which would lead to multiplicity of proceedings and complicate the rights of the parties.

18. While it is true that the doctrine of *lis pendens* under Section 52 of the Transfer of Property Act, 1882 affords statutory protection against such *pendente lite* transfers, relying solely on this safeguard often proves inadequate in practice. Permitting third-party interests to be created necessitates impleading subsequent purchasers, which prolongs the litigation and severely complicates the execution of the eventual partition decree. Therefore, granting a preventive injunction is a necessary and prudent measure.

19. Further, if the injunction is granted, the defendants would not be dispossessed and would continue to enjoy the property, but would merely be restrained from creating third-party interest. Therefore, the inconvenience caused to the defendants is minimal compared to the serious prejudice likely to be caused to the plaintiff. Thus, the balance of convenience lies in favour of preserving the property in its existing condition. Hence, Point No. 2 is answered in the affirmative.

As to Point No. 3 - Irreparable Loss

20. The third requirement is irreparable injury. The Hon'ble Supreme Court in ***Best Sellers Retail (India) Pvt. Ltd. v. Aditya Birla Nuvo Ltd., (2012) 6 SCC 792***, has held that irreparable injury means injury which cannot be adequately compensated in terms of money. In the present case, if the defendants are not restrained, they may alienate or create third-party rights in the suit property. Such acts would seriously prejudice the rights of the plaintiff and may render the final decree ineffective. In cases relating to immovable property, particularly joint family property, creation of third-

party rights leads to irreversible complications. Thus, the injury likely to be caused to the plaintiff is not compensable in monetary terms. Hence, Point No. 3 is answered in the affirmative.

As to Point No. 4

21. Considering the above discussion, the application deserves to be partly allowed. Hence, the following order is passed.

ORDER

1. The application at Exh. 5 is partly allowed.
2. The defendants, their agents or any person claiming through them are hereby restrained from transferring, alienating, encumbering or creating any third-party interest in respect of the suit property till final disposal of the suit.

Kankavli
Date: 24/03/2026

(Shubham G. Laturiya)
Civil Judge J.D., Kankavli
JO Code: - MH03297